

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held on Wednesday, April 28, 2004, in Room 209, DNR South Central Region Headquarters, 3911 Fish Hatchery Rd., Fitchburg, Wisconsin. The meeting was called to order at 8:30 a.m. All March Board Agenda business was conducted by the Full Board. The meeting adjourn at 3:34 p.m.

PRESENT: Gerald W. O'Brien, Chair
Howard D. Poulson, Vice Chair
Jonathan P. Ela, Secretary
Herbert F. Behnke
Christine Thomas

ABSENT: Stephen Willett

ORDER OF BUSINESS

Chairman O'Brien welcomed and introduced new Board Member, Christine Thomas.

1. Minutes to be approved.
 - 1.A. Full Board Minutes of March 24, 2004.
Mr. Poulson MOVED, seconded by Mr. Behnke approval of the Full Board Minutes of March 2004, as presented. The motion was carried unanimously by those members present. (Mr. Willett was absent).
 - 1.B. Conference Call Minutes of April 6, 2004
Mr. Behnke MOVED, seconded by Ms. Thomas approval of the Conference Call Minutes of April 6, 2004, as presented. The motion was carried unanimously by those members present. (Mr. Willett was absent).
 - 1.C. Agenda for April 28, 2004.
Secretary Hassett asked that Items 7.A. and 7.C. be moved to right before lunch, Item 3.B.9. moved to end of day around 2:30, and Items 4.C. and 4.D. be addressed reverse order.
Mr. Behnke MOVED, seconded by Mr. Ela approval of the April 28, 2004, agenda as amended. The motion was carried unanimously by those members present. (Mr. Willett was absent).
2. Ratification of acts of the Department Secretary.
 - 2.A. Real estate transactions.
Mr. Ela MOVED, seconded by Mr. Behnke approval of the real estate transactions for April 2004 as presented. The motion was carried unanimously by those members present. (Mr. Willett was absent).
3. Operating Committees.
 - 3.A. Air, Waste and Water/Enforcement Committee.
 - 3.A.1. Minutes. There were no committee minutes for March 2004 since all agenda items were taken up during the Full Board Meeting.
 - 3.A.2. Adoption of modifications to the previously approved Board Order No. DG-22-01 (Clearinghouse rule 01-104) regarding the amendment and creation of state administrative rules pertaining to the regulation of injection wells in the State of Wisconsin.
Lee Boushon, Section Chief, Drinking Water Systems, Bureau of Drinking Water and Ground Water, stated that federal regulations require that each state establish an Underground Injection Control (UIC) Program to protect underground sources of drinking water from contamination that may result from the use of injection wells. Board Order DG-22-01 was originally approved by the NRB in January 2002, however both the Assembly Committee on Environment and the Senate Environmental Resources Committee requested the DNR consider modification of the proposed rules. They had concerns about the wording in s. NR 815.12 as it related to the visitorial powers of DNR employees. The Department modified the rule to reflect the suggested changes.

Mr. Behnke MOVED, seconded by Mr. Ela approved Board Order No. DG-22-01 (Clearinghouse rule 01-104) regarding the amendment and creation of state administrative rules pertaining to the regulation of injection wells in the State of Wisconsin. The motion was carried unanimously by those members present. (Mr. Willett was absent).

- 3.A.3. Adoption of revisions to Chapter NR 116, WI Admin Code, pertaining to floodplain management
Gary Heinrichs, Senior Floodplain Manager, Bureau of Watershed Management stated the revisions to NR 116 include a definition of a “deck” and allow decks in floodplain areas.
Mr. Behnke asked for clarification of the definition of decks.
Gary Heinrichs Senior Floodplain Manager, Bureau of Watershed Management stated a deck is attached to house. It must meet other regulations such as being 75 feet from shoreline.
Mr. Ela asked if there can be a roof over a deck, but would it in that case be subject to the 50% rule.
Mr. Heinrichs stated yes.
Mr. Behnke asked what is the difference between deck and a four-season room.
Mr. Heinrichs the definition of a deck is an open sided structure. If it’s screened it’s really a screened porch, unenclosed including a roof.
Mr. Ela MOVED, seconded by Mr. Poulson approval of adoption of revisions to Chapter NR 116, WI Admin. Code, pertaining to floodplain management. The motion was carried unanimously by those members present. (Mr. Willett was absent).
- 3.A.4. Request for authorization for hearing for revisions related to septage operator certification requirements Chapter NR 114, WI Adm. Code, for septage operator certification was last revised in 1995.
Greg Kester, Wastewater Engineer, Bureau of Wastewater Management stated the proposed revisions would remove the lifetime certification; increase fees; commit the department to use fees for the purpose of implementing the septage program; restructure certification grades; convert existing operators to new grade; establish minimum experience requirements; mandatory class and exam in order to become an operator-in-charge with exemptions for those who would have been eligible for the lifetime certification within 3 years of the rule effective date; and establishes variance procedure to allow flexibility in implementing non-statutory requirements.
Mr. Behnke asked what the current fees and how much are the increases and if this item required legislative approval.
Greg Kester, Wastewater Engineer, Bureau of Wastewater Management stated legislative approval not required. The fee increases are: exam costs from \$25 to \$100, renewals from \$45 to \$65, late penalty fees from \$25 to \$100, and operator and training registration from \$10 to \$25.
Mr. Behnke MOVED, seconded by Mr. Poulson approved request for authorization for hearing for revisions related to septage operator certification requirements Chapter NR 114, WI Adm. Code, for septage operator certification was last revised in 1995.
Mr. O’Brien asked if the septic operators are people who operate municipal systems.
Greg Kester stated it is for residential holding tank operators.
Mr. Ela asked about NR 113, which is also funded by these fees.
Mr. Kester stated NR 113 is the code that sets requirements for the disposition of the pumping once the system is pumped.
The motion was carried unanimously by those members present. (Mr. Willett was absent).
- 3.B. Land, Management Recreation and Fisheries/Wildlife Committee.
- 3.B.1. Minutes. There were no committee minutes for March 2004 since all agenda items were taken up during the Full Board Meeting.
- 3.B.2. Adoption of rule order WM-08-04, pertaining to the control and eradication of Chronic Wasting Disease
Bill Vander Zouwen Section Chief, Wildlife and Landscape Ecology, Bureau of Wildlife Management stated the changes include boundary modifications, deer population goals, extending archery season and charge a minimal fee for nuisance permits. There is some resistance by hunters who have a deer and are required to give up the head for CWD testing. The Department will make allowances for hunters with a trophy buck to take the heads to a taxidermist as long as the brain comes back for sampling.
Mr. Behnke asked if the taxidermist would take out the sample.
Mr. Vander Zouwen stated that the taxidermist would send the whole skull because the taxidermist hasn’t had the training to remove to sample.
Mr. Behnke asked if there is criticism about the reward system.

Mr. Vander Zouwen stated that most of the criticism comes from people who are opposed the plan in general. They say that there would be trespassing and shooting from roads, but we didn't see it happen. Some people are uncomfortable with paying people to shoot deer because of recreation, tradition, and sport. **Ms. Thomas** asked about how many deer there were in the units within the CWD zone before and after the disease infected the area.

Mr. Vander Zouwen stated it depends on the unit because the CWD zone affects many units. Some had goals of 15 deer per square mile, another metro unit had a goal of 10 per square mile, others had goals of 25. Most recent air surveys find 28-35 deer per square mile.

Mr. O'Brien asked about Colorado which has a goal of less than 5 deer per square mile. Where are they now with handling the CWD problem?

Mr. Vander Zouwen stated that Colorado's at herd control are also relatively new, but unlike us they have had the disease for a long time in a much larger area. Their goal is reducing the populations by 50%, but eradication is not possible. They have done more sampling this year and found a larger geographic area with a CWD population. They don't know the speed and distance of the spread because they hadn't been sampling very long.

Mr. Behnke stated he has heard comments that the disease has been around for 25 years or more and they have been living with it. He asked why can't we just live with it.

Mr. Vander Zouwen stated they are living with it because they don't have a choice because the spread of the disease is so broad. People in Colorado and Wyoming who have reviewed our program stated that Wisconsin has an opportunity that they don't because the disease is in a smaller area.

Greg Kazmierski, Waukesha, Wisconsin Deer Hunters Coalition stated he is not disagreeing with the Department's plan on eradication and herd reduction. He is opposed to how the Department is going about the plan. He stated that in Unit 70A the deer harvest has gone down. We need to work on a plan to embrace hunters and landowners. The current plan hasn't been successful and we need to develop a plan that is successful.

Ms. Thomas asked what is the alternative view.

Mr. Kazmierski stated that the split seasons don't work. That makes the deer go nocturnal. Rather than penalizing the hunters by restricting hunting with earn-a-buck, we should reward hunters for hunting in intensive zone by allowing them to shoot extra bucks.

Mr. Behnke asked what parts of the Department plan does Mr. Kazmierski agree with.

Mr. Kazmierski stated he agrees with the concept of reducing the herd, but the current plan isn't working. The harvest figures don't show the reduction in the herd.

Mr. Behnke asked for clarification about not reducing the herd, is that based on total kill numbers or the number of deer that are still out there.

Mr. Kazmierski stated he doesn't believe there are fewer deer there.

Mr. Behnke stated he would like the Department to respond to this.

Mr. O'Brien asked what he is seeing on the 1000 acres in eastern Grant County. Has he been taking more or less deer since the CWD rules went into effect?

Mr. Kazmierski stated they are taking fewer deer because the deer are nocturnal.

Tony Grabski, Blue Mounds, local landowner stated the time has come to shift to a more passive plan as recommended by a DNR panel of six national experts in their external review of CWD management in Wisconsin. The aggressive efforts to eradicate CWD from Wisconsin have been clearly unsuccessful. He asked the Department to return to the deer hunting that we remember before CWD.

Mr. Behnke asked if Mr. Grabski is in favor of going back to 9-day season in the eradication area.

Mr. Grabski stated longer seasons are necessary, but the season should start at traditional time periods. An early zone T would be OK, but 23-day season would be more acceptable.

Mr. O'Brien asked if deer are nocturnal by nature.

Mr. Grabski stated for the most part they are.

Mr. Vander Zouwen stated he recently attended a lecture discussing foot and mouth disease breakout in California in the 1920s. There was opposition to eradicating deer, but they were able to control disease and deer population. The deer population recovered. It is way too early for Wisconsin to give up on the CWD eradication efforts. The harvest wasn't as good as we would like. It could be because people had buck tags and didn't shoot the antlerless deer.

Ms. Thomas stated that it seems like these two people aren't opposed to herd reduction. They are unhappy because the management regime is affecting their sport. This time of year deer aren't nocturnal. She suggested an earn-a-buck season the two weeks before turkey season opens. It would be taking antlerless deer out of herd before they fawn.

Mr. Vander Zouwen stated the Department tried that in the past and maybe will extend the landowner permits through the end of March. We don't know how successful that would be because hunters need to be motivated to hunt and people aren't thinking about hunting this time of year and there are no antlers on the deer, which is usually a driving force.

Ms. Thomas stated it would be a discrete season, not an extended season. The motivation would be to earn buck tags for the fall season.

Mr. Vander Zouwen stated the harvest would be significantly reduced if we went back to a 9-day season in the fall. Perhaps the reason the harvest is down is because people don't want to shoot deer that are infected with the disease.

Mr. Ela asked if deer are getting smarter because of long term genetic pressure favoring selection of deer that are smart enough to avoid getting shot.

Mr. Vander Zouwen stated he can't answer that, but they do adjust their behavior over time.

Mr. Poulson stated he is concerned for landowners, but disease is here and we have to try to eradicate it. We will continue to listen and make changes from suggestions, but how do we get to the end result of a safe herd.

Mr. Behnke stated we need more time to evaluate the Department program. We appreciate public involvement. We will modify plan as we go along, but we are on the right track.

Mr. Behnke MOVED, seconded by Mr. Poulson approved adoption of rule order WM-08-04, pertaining to the control and eradication of Chronic Wasting Disease.

Ms. Thomas stated she would like the Wildlife program to look at some scenarios that would do something to return the seasons to something more normal.

The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.3. Approval of certification for the state forest system

Paul Delong, Administrator, Forestry Division stated that auditors accredited by the Sustainable Forest Initiative (SFI) and the Forest Stewardship Council (FSC) systems recently completed third part forest certification assessments of the 490,000-acre Wisconsin State Forest System. Full certification would not become effective until after the NRB approves commitment to the program.

Mr. Ela asked about the status of certification in countries like Malaysia, Brazil, China and Russia.

Mr. Delong stated that in Indonesia and Malaysia there is illegal harvesting. Certification can help know which harvests are legal.

Mr. Behnke asked when someone goes to the local lumberyard to buy lumber how will they know it's certified?

Mr. Delong stated there would be a stamp stating FSC certified product.

Mr. O'Brien asked if today's item only pertains to public land or private as well.

Mr. Delong stated the today's item is just certifying state forests.

Mr. Ela asked what kind of movement is there for federal forest certification.

Mr. Delong stated the policy has been not to certify because there's a question about whether to log national forest at all. The debate is changing because the demand for certification is increasing.

Mr. Ela stated there is criticism of the national forest service in the West that they are liquidating the forests, rather than sustaining them.

Mr. Delong stated that supporting certification identifies if the forests are being managed correctly. The master plans need to be determined through public input

Mr. Behnke asked how will county forests and managed forest land be affected by certification. Will they be required to follow the direction that state-owned land is going?

Bob Mather, Director, Bureau of Forest Management (MFL) stated they will not be required to be certified. At this time there is a two-stage process. A scoping process to see if they are even able to be certified and there is a full assessment process. The county and MFL must still be audited before they can seek certification. The NRB decision only affects state forest.

Mr. Behnke asked if the state will be paying for County and MFL audit.

Mr. Mather stated there is a grant program for county forest.

Mr. Ela asked if it is a county by county decision.

Mr. Mather stated yes, but there are group certifications. The DNR could be the group manager. The individual county can decide whether they would like to participate. The MFL is much more difficult and complex. Again we will approach it with group certificate holders. The auditing would be done by state. He stated the recommendation of the governor's council is to seek dual certification from Forest Stewardship Council and Sustainable Forestry Initiative.

Mr. Poulson asked how will the forests comply with the non-point rules and will it be part of the certification. How does it comply with ISO 14001?

Mr. Mather stated we must be compliant with all the laws to be granted certification.

Mr. Delong stated ISO 14001 doesn't evaluate the suitability forest, but it is complementary because it evaluates the systems involved in forestry practices.

Mr. Ela asked to what extent are other forest uses examined. For example, ATV management, natural area management, etc.

Mr. Delong stated we used our harvest records about where take the auditors. The auditors would randomly choose sites to examine because they are looking at total program including recreation, public use, tribes, and protect endangered species.

Timothy Laatsch, Senior Vice President at StoraEnso, formerly known as Consolidated Papers. We support the certification of Wisconsin forests. The values of our company drive sustainability and endorse this recommendation. Certification is important for long term process of sustainable forest management. Enhance the fact that the state is already caring responsibility for the forest of Wisconsin. Wisconsin should walk the talk and serve as a model.

Mr. Ela asked if StoraEnso forests are certified worldwide

Mr. Laatsch stated yes, under a variety of programs depending on the country there are different certifications.

Mr. Poulson asked about the states.

Mr. Laatsch many states such as Minnesota and Michigan are going for dual certification.

Mary Jean Huston, Vice Chair, Wisconsin Council on Forestry supports dual certification of Wisconsin's State Forests. It demonstrates to consumers, private landowners, the forest industry, forest product users, county governments, and others in the state support sustainable forestry practices.

Christopher Nehrbass, Forest Stewardship Chair, John Muir Chapter of the Sierra Club is opposed to certification. We argue that forest certification does little to improve the management goals of the DNR because the DNR is already aware of the problems our forests face. The money would be better spent on invasive species, endangered species and law enforcement. The DNR should consider if the DNR should be in the business of supporting for profit companies. The DNR should consider if it is a goal of the state to place itself in direct competition with private landowners. Seeking dual certification is redundant.

Mr. Ela stated he is puzzled about where Mr. Nehrbass sees the downside. He asked why is this a bad idea.

Mr. Nehrbass stated there are many hidden costs that aren't documented such as training and field time. With the budget how it is, the DNR don't have the money.

Mr. Behnke MOVED, seconded by Ms. Thomas approved certification for the state forest system. The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.4. Request for authorization for public hearing for revisions to NR 46.30(2) pertaining to annual stumpage rates.

Linda DePaul, Section Chief, Forest Tax, Bureau of Forestry stated Section 77.06(2) and 77.90(1) require an annual hearing related to the determination of stumpage values used in calculating severance and yield taxes on timber cut from Forest Croplands and Managed Forest Lands. The average price for sawtimber is a 7.29% increase over current rates. The pulpwood prices, on average, would increase 3.56%.

Mr. Behnke MOVED, seconded by Mr. Poulson authorized public hearing for revisions to NR 46.30(2) pertaining to annual stumpage rates. The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.5. Request for authorization for public hearing for annual Wildlife Management housekeeping order, WM-02-04.

Kurt Thiede, Wildlife Biologist, Bureau of Wildlife Management stated these rule changes are minor in nature, non-controversial and can most effectively be handled through the housekeeping procedure. We are proposing changes that provide clarifications to current rules, updating definitions, increasing management efficiency and altering limitations on hunters.

Mr. Behnke MOVED, seconded by Mr. Poulson request for authorization for public hearing for annual Wildlife Management housekeeping order, WM-02-04. The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.6. INFORMATIONAL ITEM – Lake Michigan Integrated Fisheries Management Plan, 2003-2013.

Bill Horns, Great Lakes Fisheries Coordinator, Fisheries Management and Habitat Protection Bureau stated the plan is designed to guide management of sport and commercial fisheries in Wisconsin waters of Lake Michigan during the years 2003-2013. There are four main goals of the plan: a diverse, balanced healthy ecosystem; a diverse multi-species sport fishery; a stable commercial fishery; and science-based management.

Jonathan Ela asked what the level of contamination in large lake trout and are they a salable product.

Mr. Horns stated that the largest ones are not salable. The 14-16 inch lake trout are marketable.

Mark Marique, Green Bay, Lake Michigan Commercial Fishing Board asked the Board to reconsider the drastic cut of yellow perch quotas. He would like the quota to be expanded to 60,000 lbs. It would help the commercial fisherman to pay bills and survive. Please revisit the decision as soon as possible.

Mr. Ela asked what are theories about what accounts for the increased numbers in the yellow perch population.

Mr. Behnke asked how big will these fish be a year from now.

Mr. Horns stated it depends on availability of and competition for food. It will take a year longer for them to reach legal commercial size limit than in the past because of sheer numbers.

Mr. Marique it will take at least a year for them to become legal limit for commercial fisheries. These fish will swim right through our gear.

Mr. Horns stated there are a number of factors that affect perch. It could be weather more than anything and cormorants could be another factor.

Mr. Behnke asked what if the Board would like the Department to consider a change in policy before the rule could be changed.

Mr. Horns stated an emergency rule could be in place for this summer, but I don't advise that. We will study this in late summer. We could change this for next summer.

Mr. Behnke stated the Department should consider a possible season for next summer.

3.B.7. INFORMATIONAL ITEM – Update on what the DNR is doing on invasive species across the state.

Ron Martin, Water Resources Management Specialist, Watershed Management Bureau stated there is a wide range of non-native invasive plants, invertebrates, vertebrates and disease organisms that create problems for land and water management in Wisconsin. Working with partners and educating the public are critical components to this work and are a large part of the Departments current efforts on invasives.

Mr. O'Brien asked how can we control zebra mussels.

Mr. Martin stated there is no way to eliminate the species, but there are some fish and waterfowl that eat them. These predators can impact the numbers, but cannot control the numbers.

Mr. Ela asked what determines noxiousness.

Mr. Martin stated it is the invasiveness of a species and the potential of it to become a problem. Landowners are supposed to eradicate them from their land.

Mr. Behnke asked if mute swans are protected.

Tom Hauge stated that last year the Department was pursuing a control program for mute swans. In the meantime there was a federal court case in Maryland. The U.S. Fish and Wildlife Service considers mute swans outside of migratory bird treaty. The court case challenged that and currently all permits have ceased for Mute Swan control. The pending legislation is working on declaring mute swans outside of treaty.

3.B.8. Approval to conduct public input sessions on Greater Prairie Chicken Plan. INFORMATIONAL ITEM – Greater Prairie Chicken Plan MODIFICATION TO AGENDA

Keith Warnke, Wildlife Biologist, Wildlife Management Bureau The Greater Prairie Chicken Plan outlines management objectives and actions for the next 10 years that are critical to conserving GPCs in Wisconsin. It recommends adding permanent grassland to GPC range in central Wisconsin.

Mr. Behnke MOVED, seconded by Mr. Ela approval to conduct public input sessions on Greater Prairie Chicken Plan.

Mr. O'Brien stated there are letters commenting on this plan, with requests from individuals to meet with the Board.

Mr. Warnke stated the Department would like to have an information session with these partners at a future Board meeting.

Mr. Behnke stated he thinks that is important.

Mr. Ela stated the document is confusing and suggested it be revised so it's clearer.

The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.9. Northern Highland - American Legion State Forest and New Wood Wildlife Area land acquisition, Vilas, Oneida and Lincoln Counties

Governor Jim Doyle stated last year, we became aware the Wisconsin Valley Improvement Company would consider selling the Rainbow Flowage. He directed the Department to try to acquire the land. For a selling price of \$7,040,000 supported entirely by stewardship money, we will acquire 5,167 acres of wild and cared for land. In addition, WVIC will donate an additional 10,000+ acres of flowed land under the Rainbow and Willow flowages. The state's purchase of the Rainbow Flowage is a great example of why Wisconsin's Stewardship Fund is so visionary.

Mr. Ela MOVED, seconded by Mr. Behnke approve land acquisition in the Northern Highland - American Legion State Forest and New Wood Wildlife Area, Vilas, Oneida and Lincoln Counties. The motion was carried unanimously by those members present. (Mr. Willett was absent).

Ms. Thomas stated she doesn't own any recreation land and she recreates almost entirely on the public land. She has recreated both at Northern Highland-American Legion Forest and the New Wood Wildlife Area. She is excited to be a part of adding to that legacy today.

The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.10. Green Bay West Shores Wildlife Area, land acquisition and resale – Marinette County.

Mr. Behnke MOVED, seconded by Mr. Poulson approve land acquisition and resale for Green Bay West Shores Wildlife Area – Marinette County. The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.11. Glacial Habitat Restoration Area, land acquisition – Winnebago County.

Mr. Ela stated there is no other dept land anywhere near it. He asked if any of the adjacent land is under habitat restoration programs.

Richard Steffes, Section Chief Real Estate stated that the glacial habitat project is not a project designed to be one large parcel of land.

Mr. Ela MOVED, seconded by Mr. Thomas approve land acquisition for Glacial Habitat Restoration Area– Winnebago County. The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.12. Statewide Natural Area, land acquisition – Juneau County. (Richard Steffes, 5 minutes)

Amy Rosenbrough, Madison, Office of State Archeologists of the Wisconsin Historical Society stated this purchase will transfer ownership of a significant archaeological site into public lands. The Cranberry Creek village is believed to have been occupied by the Cranberry Creek mound groups.

Mr. O'Brien asked if there have there been digs yet.

Ms. Rosenbrough stated there has been pottery found.

Mr. Behnke MOVED, seconded by Mr. Poulson approve land acquisition Statewide Natural Area, land acquisition – Juneau County. The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.13. Baraboo Hills Recreation Area, land acquisition, Sauk County

Mr. Behnke asked if the seven lots can be built on.

Mr. Steffes stated they can be built on, but the 40 acres to the east and the north could not be built on.

Mr. Behnke MOVED, seconded by Mr. Ela approve land acquisition Baraboo Hills Recreation Area in Sauk County. The motion was carried unanimously by those members present. (Mr. Willett was absent).

3.B.14. Statewide Public Access Area, land acquisition, Burnett County

State Representative Mark Pettis, 28th District stated this is a valuable piece of fishing waters. The previous owner allowed access to fisherman in the winter. The fear is that the new owner would not allow fishermen access the lake in the winter.

Mr. Behnke MOVED, seconded by Ms. Thomas approve land acquisition Statewide Public Access Area in Burnett County.

Ms. Ela stated he is concerned about where there is a state interest and whether state dollars should be used rather than local dollars. He asked the department to prepare a summary on the statewide public access program, focusing on what determines that there is a state interest that justifies using Stewardship Fund dollars that are earmarked for state acquisition projects.

The motion was carried unanimously by those members present. (Mr. Willett was absent).

ADDITION TO AGENDA

Derek Johnson, Habitat Director, Madison, The Nature Conservancy stated a conservation easement would prevent fragmentation of the landscape, protect water quality, and protect important breeding habitat for the federally threatened Hine's Emerald Dragonfly.

Mr. Ela MOVED, seconded by Ms. Thomas approve easement purchase and boundary modification Mud Lake Wildlife Area in Door County. The motion was carried unanimously by those members present. (Mr. Willett was absent).

4. Committee of the Whole.4.A. Citizen Participation. (1:00 P.M.)

- 4.A.1. **Verla Klingenmeyer**, North Freedom, local farmer and landowner in Sauk County stated deer are aggressively damaging our crops. The problem begins with adjacent landowners whose view of deer management are either totally lacking or inconsiderate of area farmers. She suggested the Board begin requiring recipients of land conservation program payments to manage the growing deer population along with the rest of the natural resources on their properties.

Mr. Poulson asked how would you work a program where you limit payments.

Ms. Klingenmeyer stated it is not limiting payments or being in the program. However a farmer in the program should control deer population by hunting or allowing people to hunt.

Mr. Ela asked if Ms. Klingenmeyer's neighbors are farming or using the land productively.

Ms. Klingenmeyer stated no, but he is trying to save the land and restore prairies. But, he doesn't allow hunting, which affects farmers, CWD programs, auto insurance companies.

Mr. Ela asked if she believed the solution is to make the support programs conditional on deer control actions being taken.

Ms. Klingenmeyer stated yes because we can't afford to feed all the deer.

- 4.A.2. **William Winch**, Vesper, landowner in Vilas County representing himself explained his land overlap issue in Vilas County.

Mr. O'Brien stated this is a legal matter rather than a Board matter.

Secretary Hassett stated he will talk to DNR attorney, Rick Henneger to address this issue.

- 4.A.3. **John Cates**, Madison, landowner in Vilas County representing himself explained his land overlap issue in Vilas County.

- 4.A.4. **John Slaney**, Merrimac, representing himself regarding trout regulations in Richland County. He would like the trout regulations to be changed from a no-kill trout stream to category 3 stream.

Mr. Behnke stated there is a difference of opinion about how to manage trout in that area and asked the Department to provide the Board with more information about the justification of the trout regulations.

Mr. O'Brien stated the Secretary will have the appropriate staff member present information regarding this issue to the Board next month.

- 4.A.5 **Greg Kasmerski**, Waukesha, Wisconsin Deer Hunters Coalition, presented the results of the Spring Hearing vote regarding the 23-day season. He believed the vote was influenced by the Department at the meeting. Hunters want to get rid of earn-a-buck.

Mr. Behnke stated the Wisconsin Deer Hunter Coalition should also include some members of the Conservation Congress.

Mr. Ela stated that at the spring hearing in Door County where he attended, the staff didn't try to steer the discussion one way or the other.

4.B. Retirement Resolutions.4.B.1. Richard E. Denney4.B.2. Gerald L. Trumm4.B.3. Wayne E. Schutte4.B.4. Stanley J. Nogalski4.B.5. David Kunelius4.B.6. John K. Wickland4.B.7. Helen Flores4.B.8. Kenneth L. Wolff Jr.

4.B.9. Bruce E. Kohn – **ADDITION TO AGENDA**

Mr. Poulson MOVED, seconded by Mr. Ela approve the retirement resolutions. The motion was carried unanimously by those members present. (Mr. Willett was absent).

4.C. Request for authorization for public hearing on permanent rule order FH-24-04 to create Chapter NR 341, pertaining to grading on the banks of navigable waterways.

Todd Ambbs, Administrator, Division of Water requested that when the Board votes on Item 4.D., the emergency rule, that language will replace the hearing authorization permanent rule language presented here.

Mr. Behnke asked if that could wait until the May regular meeting.

Lisa Nesta, Statewide Waterway Policy Coordinator, Bureau of Fisheries Management and Habitat stated it would be better if we move it along.

Mr. O'Brien asked for the conference call to try to be scheduled on May 10th, after 10:00 a.m.

4.D. Request for adoption of emergency rule order FH-21-04 (E) to create Chapter NR 341, pertaining to grading on the banks of navigable waterways. **ADDITION TO AGENDA**

Lisa Nesta, Statewide Waterway Policy Coordinator, Bureau of Fisheries Management and Habitat stated the reasons for the emergency rule are: general permits needed to avoid delaying thousands of projects with new notice requirement, property owners, consultants and contractors at risk of unintended violation, and Lakes and streams are at risk.

Mr. Ela asked if ORW and ERW are specifically listed as priority waters in the statutes.

Ms. Nesta stated yes, they are. She stated a bank is determined by 75 ft or <12% slope

Mr. O'Brien asked if it is at least 75 feet or could it be less than 75 feet.

Ms. Nesta stated it is the outermost point to how far inland the bank extends, up to 75 feet or where the slope becomes <12%. There are examples of sites that have a steep slope and then it flattens out for a short distance. The rule clarifies that the flattening out must extend inland at least 50 feet.

Mr. Behnke asked about the ordinary high water mark. It is a point of contention especially where there has been bank erosion over a period of time. How do you determine bank distance when there has been erosion over a period of time?

Ms. Nesta stated it's going to be a larger issue besides just grading, for example building setbacks. We tried to use a consistent definition of high water mark as a measure.

Mr. Behnke asked what evidence would the landowner have to have to say that this is the ordinary high water mark.

Ms. Nesta stated if they could show where the presence of water is so continuous to leave a distinct mark. Historic information such as surveys is helpful.

Mr. Behnke asked if there are any circumstances where you would allow reclamation of the ordinary high water mark that the landowner once had.

Ms. Nesta stated that yes we do allow that under our shore protection regulations, NR 328. There is case law to support that. There is more responsibility on the landowner to be able to show the loss such as using photos.

Mr. Ela asked under NR 216 who has jurisdiction for that construction site permit.

Ms. Nesta stated commerce has jurisdiction for commercial buildings, otherwise the DNR for residential.

Mr. Behnke asked for smaller sites if there is any consideration given for conforming with adjoining property owners who have done some grading in the past. For example when the grading has caused the shore to look uneven.

Ms. Nesta stated we haven't done anything in this proposal to try to have people match their grading activities, but it's a good idea.

George Meyer, Madison, Wisconsin Wildlife Federation stated he is representing all four groups who were scheduled to appear who support the rule. However, this rule provides significantly less protection for the natural resources of the state than the protection before Act 118 was put into place. There will be a loss of habitat due to under staffing. This emergency rule isn't as strong as the permanent rule that was drafted in the proposal that first came to you. There are now only three categories of precious waters; in the previous rule there were 11 categories. The major goal of the job creation act is regulatory streamlining. We would like to request to be able to submit public comment if there are additional changes made to this rule before the vote.

Mr. Ela observed that the issue of whether general or individual permits would apply to ORW and ERW lakes seemed to be the principal remaining point of contention. He inquired whether it might not be

possible to write the rule in such a way that a mandatory site inspection would occur for any grading application on a ORW or ERW lake, and suggested that that might resolve the issue.

Ms. Nesta stated that under the statute the Department has 30 days and we can stop the 30 days once to gather additional information.

Mr. Meyer stated that if on ORW there was a mandatory site visit and a determination by the Department that general permit conditions would not protect those waters or that they would protect those waters, he would feel more comfortable.

Mr. Ela asked if a database allows flagging automatically when a permit involving ORW/ERW waters comes in.

Ms. Nesta stated before the Job Creation Act, we didn't track permits on ORW/ERW waters. Some applicants may feel the time delay has increased.

Mr. Behnke moved and Mr. Poulson seconded. Then withdrew their motion and seconded.

Mr. Ela asked for a motion to table the item to allow more time for negotiation between interested parties and to vote on it within the next 10-14 days. Seconded by Ms. Thomas.

The motion was carried unanimously by those members present. (Mr. Willett was absent).

5. Board Members' Matters.

Mr. Behnke stated at the March meeting the Board adopted a motion that the Department immediately begin the formal process requesting the U.S. Fish and Wildlife Service to grant a one time exemption from the five year rule that allows the change of boundary. I would ask each member of the Board to receive a copy of that request and the date it was sent. Secondly, Mr. O'Brien and I met with cattle rancher, Mr. Fornengo in Burnett County regarding wolf depredation. I ask the Department to consider a payment variance for this particular ranch because of the high number of wolves in the area. This fall the Department will rewrite the wolf management plan. I would like the Department to report to the Board at May meeting to address the loss by this rancher.

Mr. Poulson stated he received a letter from a landowner who owns land adjacent to DNR land that is now land locked. I would like to ask the Secretary to take a look at the letter

6. Special Committees' Reports.

None.

7. Department Secretary's Matters.

7.A. Presentation of 2004 Rebecca Wallace Award

Secretary Hassett - Rebecca Wallace was Chief of the Runoff Management Section until her death in an automobile accident on February 22, 1997. Her husband, Lyle, his brother and wife were also killed in the accident. Mitch and Spencer (present today) and Jeremy Wallace are Becky's sons. Department staff asked the Natural Resources Board to create this annual award in honor of Becky's memory. This is 6th year of granting awards. This year's recipient is Ms. Laura Herman from the DNR Northern Region in Rhinelander. Laura was nominated by several of her co-workers for her work as Aquatic Plant Management Coordinator for a 6-county area, Aquatic Exotic Species Expert, and Self-help Lakes Volunteer Coordinator for the eastern half of the Northern Region.

7.B. DONATION - from Wisconsin Off Road Bicycles Association (WORBA) for a gift of \$7,000 for maintenance of the mountain bike trails at the Southern Unit of the Kettle Moraine State Forest.

Mr. Behnke MOVED, seconded by Mr. Poulson accept donation from Wisconsin Off Road Bicycles Association (WORBA) for a gift of \$7,000 for maintenance of the mountain bike trails at the Southern Unit of the Kettle Moraine State Forest. The motion was carried unanimously by those members present. (Mr. Willett was absent).

7.C. PRESENTATION - Recognition of Department employees for the Lake Kegonsa State Park Environmental Management System achieved ISO 14001 EMS certification. ADDITION TO AGENDA

Secretary Hassett - The Lake Kegonsa State Park's environmental management system received ISO 140001 certification on November 13, 2003. The EMS auditor believes that this is the first park in the United States to achieve certification.

Mr. Poulson stated he and Jonathan will be attending a June 7th Mid-Kettle Moraine Meeting. They will represent the Natural Resources Board

Ms. Thomas was assigned to the Land Committee.